IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 958 of 2007

MADHU SINGH @ MADHO SINGH
V/S
PREM SINGH & ANR.

Mr. J GEHLOT for Mr. DK PARIHAR, for the appellant / petitioner

Mr. RAMESHWAR CHOUHAN, for the respondent no.1.

Date of Order : 28.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Learned counsel for the petitioner submits that notwithstanding anything contained in the written statement the defendants does not want any decree for any money against the plaintiff, and on the basis of the pleadings taken in the written statement by claiming set off the petitioner only means the plaintiff's suit to be dismissed, and does not want any further decree.

Issue notice.

Mr. Chouhan appears for the respondent and accepts notice.

At the request of the learned counsel for the parties, in view of the short controversy involved, the matter has been heard finally at this stage.

By the impugned order, the learned trial court has

dismissed the petitioner's application filed under O. 6 Rule 17 and O. 14 Rule 5 C.P.C.

The necessary facts are that the plaintiff non-petitioner filed the suit against the defendant petitioner for recovery of Rs. 1,92,500/- under O. 37 R. 1 C.P.C. wherein the defendant filed written statement, and in that written statement raised certain preliminary objections. Then, in additional pleas the defendant also took certain pleas including that the plaintiff did pay Rs. 3,82,000/- against the sale price but did not pay the remaining amount of Rs. 3,43,000/- which was agreed to be paid in instalment, and in order to avoid payment of that balance sale price a false suit has been filed. Then, a set off under under O. 8 Rule 6 C.P.C. has been pleaded pleading interalia that on account of non-payment of the instalment to R.F.C., the defendant sold the bus to the plaintiff for a sum of Rs. 7,25,000/- on 12.2.1996, and it was also agreed that Rs. 1,25,000/- will be paid in cash, and balance amount will be paid instalment. Accordingly the plaintiff gave a cheque of Rs. 1,25,000/-, and regarding remaining amount it was pleaded that in piecemeal total sum of Rs. 3,82,000/- were paid but Rs. 3,43,000/- has not been paid till the date, and the defendant purporting to plead set off claimed decree against the plaintiff for Rs. 3,43,000/-. On this controversy issues were framed including issue no. 7 which included pleading about defendant's claiming a sum of Rs. 3,43,000/- to be

outstanding against the plaintiff, and as to whether the defendant is entitled to a decree for the said amount of Rs. 3,43,000/- by way of counter claim/set off. Then, an objection was raised about the question of court fees to be decided as preliminary issue being issue no. 7, and it appears that the matter was brought to this Court, and this Court directed to decide it as preliminary issue.

At that stage present application under O. 6 Rule 17 and O. 14 Rule 5 C.P.C. has been filed. The prayer made in this application is that issues have been framed without reading the pleadings of the written statement, and that the issue has been framed treating the defendant's claim to be counter claim while it has been pleaded as set off, and therefore, the expression "प्रतिदावा/counter claim" was prayed to be struck off, and obviously the issue was required to be recast, and it is this application which has been dismissed by the learned trial court by the impugned order.

The thrust of the order is, that since the defendant has claimed a decree for Rs. 3,43,000/- against the plaintiff whether by way of set off or counter claim, but since decree has been claimed, issue regarding liability of defendant to pay court fees has been rightly framed.

It is in these circumstances the learned counsel for the petitioner categorically gave out, that irrespective of the pleading of the written statement, including those comprised in the set off/counter claim, the

defendant does not claim any decree against the plaintiff, and simply means to project his pleading by way of set off, by way of pleading facts, and to ensure the dismissal of the plaintiff's suit, and therefore, the court fees is not required to be paid by the defendant on the aforesaid amount of Rs. 3,43,000/-.

In my view, since the petitioner has clearly confined his case to set off, and thereby only seeking dismissal of the plaintiff's suit, in the event of his proving set off, and is not claiming any decree for any amount against the plaintiff. In that view of the matter issues no. 7 and 9 become redundant. Likewise in view of the above statement of the learned counsel for the petitioner, issues no. 2 and 3 framed on 25.7.2003 also become redundant, and are therefore struck off.

The writ petition is accordingly disposed of. The learned trial court is directed to proceed with the suit most expeditiously as the suit is of the year 1999.

(N P GUPTA),J.

/Sushil/